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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**VIA HAND DELIVERY**

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Implementation of the Local Competition Provisions
Of the Telecommunications Act of 1996 (UNE Remand)
CC Docket No. 96-98

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, the Competitive Telecommunications Association ("CompTel"), by its undersigned counsel, hereby gives notice that on June 29, 1999, Carol Ann Bischoff of CompTel, Robert McDowell of CompTel, David Malfara of Z-Tel Technologies ("Z-Tel"), Robert Aamoth of Kelley Drye & Warren LLP, and the undersigned met with Jake Jennings, Claudia Fox, Chris Libertelli, and Jodie Donovan of the Common Carrier Bureau to discuss the above-captioned proceeding. During the meeting, CompTel distributed a copy of its draft rules (originally submitted with its comments on May 26, 1999), and the attached materials, which summarize the presentation.

In addition, Mr. Malfara, representing Z-Tel, described the products it offers in New York City using the UNE Platform currently available. A summary description of Z-Tel's product was distributed at the meeting and is attached hereto. Mr. Malfara explained that the availability of UNEs in a combination arrangement enables Z-Tel to offer an "overlay" product which utilizes advanced intelligence capabilities to manipulate the local platform to provide new services to consumers. Due to limitations on the platform by the NY PSC, Z-Tel does not offer its product to business customers in New York.

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In accordance with Section 1.1206(b), an original and one copy of this notice is being provided.

Sincerely,

Steven Augustino /CSR

Steven A. Augustino

SAA:pab

Enclosures

cc: FCC staff members listed above

# CompTel *Ex Parte* Presentation

*Implementation of the Local Competition*
*Provisions of the Telecommunications Act of 1996*
*(UNE Remand)*

June 29, 1999

# Uniform, National Rules are Needed to Promote Section 251's Goals

- National Rules Promote Rapid Market Entry. Departure from a National List Will Reduce the Pace, Scale and Scope of Local Entry
- State-by-State Litigation, or CO-by-CO determinations, Will Add Costs, Increase Uncertainty and Involve Administrative Delay
- States Should be Permitted to Add to the List But Not to Subtract from it
- The Supreme Court Never Questioned the Logic of a National List of UNEs and Most State Commissions Supported the Idea

## The Impairment Standard

- Section 251(d)(2) Must be Interpreted in a way that Preserves All Three Methods of Entry
  - The Act Neither Explicitly Nor Implicitly Favors Any Entry Strategy over Another
  - ILEC Arguments Relying on a Preference for Facilities Construction are Contrary to the Act
- Impairment Includes All Factors Affecting Whether and How Consumers Receive Competitive Alternatives
  - Cost
  - Functionality, Quality or Reliability
  - Scope of Availability/ Number of Customers Served
  - Time to Market

## The Impairment Standard (Cont'd)

- A Materiality Test Answers the Court's Concern that Trivial Differences Might Require Unbundling
- An Interchangeability Test Answers the Court's Concern that Availability of Alternatives be Considered
  - External Elements Must Be Able to Be Used Interchangeably with ILEC Integrated Elements
  - Consumers Must Not Be Able to Detect Differences Between Internal and External Elements
  - Congress Did Not Require Use of Rube Goldberg Solutions
- The ILECs' "Too Much Unbundling" and "Essential Facilities" Claims are Unfounded. CLECs have "Powerful Incentives" to Deploy Facilities

## The Impairment Standard (Cont'd)

- The Impairment Standard Will Be Met Unless and Until a Functioning, Wholesale Market Develops for Network Elements
- Only a Wholesale Market Test Mirrors UNE Availability in Competitive Markets
- A Wholesale Market Test Removes the Unbundling Obligation When the ILEC has an Incentive to Offer Network Elements Voluntarily
- Existence of a Wholesale Market is Proof that Self-Supply is Economically Feasible

## The Model Requesting Carrier

- Characteristics a Requesting Carrier is Assumed to Possess Will Define the Scope of Local Competition
  - Only Carriers with At Least These Characteristics Will Enter the Market. Therefore, the Assumptions Will Determine How Much Competition Will Develop
- Competition Cannot be Limited to Narrow Business Plans
  - CLECs Should Not be Limited by the Choices of One CLEC
- Competition Cannot be Limited by Carriers Least in Need of UNEs
- Competition Cannot be Limited to Some Areas or Some Customers. UNEs May Be Used to Provide Any Telecommunications Service

## The Model Requesting Carrier (Cont'd)

- New Entrant to Local Market
- Carrier Does Not Possess Facilities of its Own
  - Carrier Should be Assumed to be Combining the Element with Other UNEs or Third Party Elements
- Mass Market Entry
  - Carrier Should Be Able to Provide Both Business and Residential Services. No Limitations on the Availability or Use of UNEs
- Scope of Services Sufficient to Receive Universal Service Support
- Sufficiently Large Area of Service

## Broad Availability of UNEs Promotes Competitive Entry

- Competitive Markets Exhibit All Three Entry Options Simultaneously

- UNEs are Critical to the Ability of Carriers to Serve Their Customers
  - Need to Go Where the Customer Needs Service (ex. Golden Harbor)
  - Carriers Cannot Deploy Facilities Everywhere. Priorities Must Be Set, But Cannot Be at the Expense of Customers Who are Denied Service (ex. ATX, Birch Telecom)

## Broad Availability of UNEs Promotes Competitive Entry (cont'd)

- UNEs Can Be an Initial Entry Strategy
  - Replaced With Own Facilities As Volumes Increase
  - Deploy Facilities as Needed to Offer New Services
  - UNEs Needed to Serve Existing Customers/Areas While Facilities are Deployed
- UNEs Allow Innovative Uses of ILEC Capabilities
  - Application or "overlay" Providers Offer Innovative Uses of ILEC Network Through UNEs
  - Innovation Occurs Because Resources are Not Diverted to Duplicating Transmission Capabilities of ILEC Network (ex. Z-Tel)

## Local Switching UNE

- Definitional Issues: Add Packet Switching. Switching Functionality Includes Necessary Multiplexing or Routing Equipment
- External Switches Are Not Interchangeable
  - Collocation Costs, Installation Delays Impair a CLEC's Ability to Use Switching
  - Manual Cutover Process and Combinations Limit the Utility of Switching for Broad Based Applications
- No Wholesale Market Exists for Switches
  - Installation of a Switch by One CLEC Does Not Mean Switching is Available to Others
- Routing Tables are Not Proprietary

## Local Loop UNE

- Definitional Issues: Loop Includes Any Transmission Capability (high capacity, DSL, dark fiber). Loop Terminates a CLEC-designated point. Includes All Electronics to Support Transmission (e.g., DSLAMs)
- Interchangeability
  - ILEC Ubiquity Remains an Exclusive Feature
  - CLECs Collocate to Gain Access to UNEs; Fact of Collocation Cannot Be a Reason to Deny Access to Loops
- Wholesale Market
  - No Evidence that Wholesale Loops are Available
  - Loop Construction and New Technologies Limit the Scope and Availability of Competitive Services

## Local Transport UNE

- Definitional Issues: Both Dedicated and Shared Transport are Needed. UNE Must Include Ability to Transport Data Packets
- Interchangeability
  - Alternatives are Limited to Certain Paths, are Not Ubiquitous Like ILEC Transport
  - Splitting of Traffic Between Providers Can Result in a Loss of Efficiency
- Wholesale Market for Transport is Nascent
  - ILECs Continue to Provide Vast Majority of Switched Transport

# OS/DA UNE

- UNE is Closest to Meeting Wholesale Market Test
- "Human" Elements are Interchangeable, but ILEC Information Remains Critical
  - UNE Must Provide Non-Discriminatory Access to Subscriber Listings and Updates
  - Ability to Route OS/DA Traffic to Third Party Provider Must be Made Available With Other UNEs
- Wholesale Market is Developing
  - Third Party Providers Should be Permitted to Order UNE for use in Providing Service to Requesting Carriers

## Other UNEs

- The Remainder of the FCC's Initial List Satisfies the Impairment Test
  - NID -- Should be Defined to Include ILEC-owned Inside Wire
  - Signalling/Databases
  - OSS
- Lawfulness of Combinations Is Settled, but FCC Should Avoid Duplicative and Anti-Competitive Litigation
  - Should Mandate Unrestricted Use of Combination of "All UNEs" (UNE-Platform)
  - Should Mandate Extended Loop

**CompTel Proposed Rules**
**CC Docket No. 96-98**
**5/26/99**

The Competitive Telecommunications Association ("CompTel") proposes the following rules for the nondiscriminatory access to unbundled network elements pursuant to Section 251(c)(3) of the Communications Act, as amended. Changes or additions to rules currently listed in 47 C.F.R. Part 51 are underlined.

**§ 51.311 Nondiscriminatory access to unbundled network elements.**

(a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers requesting access to that network element.

(b) The quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself.

(c) Previous successful access to an unbundled element at a particular point in a network, using particular facilities, is substantial evidence that access is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

(d) Previous successful provision of access to an unbundled element at a particular point in a network at a particular level of quality is substantial evidence that access is technically feasible at that point, or at substantially similar points, at that level of quality.

(e) Incumbent LECs shall provide CLECs access to any and all equipment and facilities used to combine network elements in the same manner that the incumbent LEC uses such equipment and facilities to combine elements in the provision of their own telecommunications services.

§ 51.3xx Necessary and Impair

(a) A carrier is impaired if a failure to obtain access to a network element would impose a material increase in cost, a material delay, or would materially restrict the number or scope of customers likely to receive the service any requesting carrier seeks to offer. Impairment would arise if, for example, any one of the following applied:

(1) a denial would materially increase the cost to provision, combine, or otherwise utilize a requested network element in connection with other elements of the ILEC's network or the network of an alternative provider,

(2) a denial would cause a requesting carrier to experience a material delay to provision, combine or otherwise utilize a network element in connection with other elements of the ILEC's network or the network of an alternative provider, or

(3) a network element exhibits material economies of scale and scope.

(b) A carrier's ability to provide telecommunications service will be presumptively impaired by denial to a particular network element unless the Commission finds that:

(1) network element provisioning systems are capable of delivering any other network element (or network element combinations) to alternative providers of the particular network element on terms, quantity and quality comparable to the access that the incumbent carrier receives, and

(2) for a geographic area no smaller than an Major Trading Area, there are sufficient alternative providers of the particular network element capable of supplying the network element on terms that are comparable in quality, cost and efficiency to those of the ILEC, and in quantities sufficient to result in a competitive market for such elements and facilities.

(c) Access to a network element that has a proprietary component is necessary if a material loss in the functionality of the network element would result without access to its proprietary characteristic and if the requesting carrier's ability to provide the intended service would otherwise be impaired in accordance with paragraph (a) above.

**§ 51.319 Specific unbundling requirements.**

An incumbent LEC shall provide nondiscriminatory access in accordance with § 51.311 of this part and section 251(c)(3) of the Act to the following network elements on an unbundled basis to any requesting telecommunications carrier for the provision of any telecommunications service:

(a) *Local Loop*. The local loop network element is defined as the transmission capability (regardless of the transmission media involved, including unused transmission media such as dark fiber) between a requesting carrier-designated point in an incumbent LEC central office (or an equivalent location designated by the requesting carrier where the loop can be connected to other ILEC network elements or the network facilities of another carrier) and an end user customer premises.

(1) The local loop network element shall encompass all features, functions and capabilities of the underlying transmission facilities used to provision the local loop network element.

(2) The purchaser of the local loop network element shall obtain exclusive use of the transmission capability of this network element.

(3) The local loop network element shall include the network interface device.

(4) Wherever it is technically possible, the incumbent LEC shall provide the local loop network element configured in a manner to support the transmission specifications of the requesting carrier.

(5) At a minimum, ILECs should offer the following types of local loops: 2-wire analog, 4-wire analog, ISDN-PRI, ISDN-BRI, xDSL capable, xDSL equipped, high capacity loops (e.g., DS1, DS3, OC 12 and higher), and dark fiber loops.

(b) *Network Interface Device*.

(1) The network interface device network element is defined as a cross-connect device used to connect loop facilities to inside wiring, along with any facilities (such as riser cable or inside wire) owned by the incumbent LEC.

(2) An incumbent LEC shall permit a requesting telecommunications carrier to

connect its own local loops to the inside wiring of premises through the incumbent LEC's network interface device. The requesting telecommunications carrier shall establish this connection through an adjoining network interface device deployed by such telecommunications carrier;

(c) *Switching Capability*.

(1) Local Circuit Switching Capability.

(i) The local switching capability network element is defined as:

(A) line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card;

(B) trunk-side facilities, which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card; and

(C) all features, functions, and capabilities of the switch, which include, but are not limited to:

(*1*) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing, and dial tone; and

(*2*) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.

(ii) An incumbent LEC shall transfer a customer's local service to a competing carrier within a time period no greater than the interval within which the incumbent LEC currently transfers end users between interexchange carriers, if such transfer requires only a change in the incumbent LEC's software;

(2) Tandem Circuit Switching Capability. The tandem circuit switching capability network element is defined as:

(i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card;

(ii) the basic switching function of connecting trunks to trunks; and

(iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features;

(3) Packet Switching Capability. The packet switching capability network element is defined as the assembling, disassembling, addressing, conversion or routing of digital information in packet form. The packet switching capability network element shall include all features, functions and capabilities of the packet switching and/or routing devices.

(d) *Interoffice Transmission Facilities*.

(1) Interoffice transmission facilities are defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier including the ILEC, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

(2) The incumbent LEC shall:

(i) provide a requesting telecommunications carrier exclusive use of interoffice transmission facilities, including unused transmission media such as dark fiber, dedicated to a particular customer or carrier, or use of the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier, including the ILEC;

(ii) provide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services;

(iii) permit, to the extent technically feasible, a requesting telecommunications carrier to connect such interoffice facilities to equipment designated by the requesting telecommunications carrier, including, but not limited to, the requesting telecommunications carrier's collocated facilities; and

(iv) permit, to the extent technically feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC's digital cross-connect systems in the same manner that the incumbent LEC provides such functionality to interexchange carriers;

(3) The incumbent LEC shall provide a requesting telecommunications carrier use of packet transport defined as the transport of packetized information between (and including) two or more packet devices, or between interconnected transmission facilities which terminate at a packet device, including any intermediate routing or switching, without regard to the protocol or packet definition scheme involved. The packet transport network element shall include all features, functions and capabilities of the ILEC's packet transport network.

(e) *Signaling Networks and Call-Related Databases*.

(1) Signaling Networks.

(i) Signaling networks include, but are not limited to, signaling links and signaling transfer points.

(ii) When a requesting telecommunications carrier purchases unbundled switching capability from an incumbent LEC, the incumbent LEC shall provide access to its signaling network from that switch in the same manner in which it obtains such access itself.

(iii) An incumbent LEC shall provide a requesting telecommunications carrier with its own switching facilities access to the incumbent LEC's signaling network for each of the requesting telecommunications carrier's switches. This connection shall be made in the same manner as an incumbent LEC connects one of its own switches to a signal transfer point.

(iv) Under this paragraph, an incumbent LEC is not required to unbundle

those signaling links that connect service control points to switching transfer points or to permit a requesting telecommunications carrier to link its own signal transfer points directly to the incumbent LEC's switch or call-related databases;

(2) Call-Related Databases.

(i) Call-related databases are defined as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of a telecommunications service.

(ii) For purposes of switch query and database response through a signaling network, an incumbent LEC shall provide access to its call-related databases, including, but not limited to, the Line Information Database, Toll Free Calling database, downstream number portability databases, and Advanced Intelligent Network databases, by means of physical access at the signaling transfer point linked to the unbundled database.

(iii) An incumbent LEC shall allow a requesting telecommunications carrier that has purchased an incumbent LEC's local switching capability to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself.

(iv) An incumbent LEC shall allow a requesting telecommunications carrier that has deployed its own switch, and has linked that switch to an incumbent LEC's signaling system, to gain access to the incumbent LEC's service control point in a manner that allows the requesting carrier to provide any call-related, database-supported services to customers served by the requesting telecommunications carrier's switch.

(v) A state commission shall consider whether mechanisms mediating access to an incumbent LEC's Advanced Intelligent Network service control points are necessary, and if so, whether they will adequately safeguard against intentional or unintentional misuse of the incumbent LEC's Advanced Intelligent Network facilities.

(vi) An incumbent LEC shall provide a requesting telecommunications carrier with access to call-related databases in a manner that complies with section 222 of the Act;

(3) Service Management Systems.

(A) A service management system is defined as a computer database or system not part of the public switched network that, among other things:

(*1*) interconnects to the service control point and sends to that service control point the information and call processing instructions needed for a network switch to process and complete a telephone call; and

(*2*) provides telecommunications carriers with the capability of entering and storing data regarding the processing and completing of a telephone call.

(B) An incumbent LEC shall provide a requesting telecommunications carrier with the information necessary to enter correctly, or format for entry, the information relevant for input into the particular incumbent LEC service management system.

(C) An incumbent LEC shall provide a requesting telecommunications carrier the same access to design, create, test, and deploy Advanced Intelligent Network-based services at the service management system, through a service creation environment, that the incumbent LEC provides to itself.

(D) A state commission shall consider whether mechanisms mediating access to Advanced Intelligent Network service management systems and service creation environments are necessary, and if so, whether they will adequately safeguard against intentional or unintentional misuse of the incumbent LEC's Advanced Intelligent Network facilities.

(E) An incumbent LEC shall provide a requesting telecommunications carrier access to service management systems in a manner that complies with section 222 of the Act;

(f) *Operations Support Systems Functions*.

(1) Operations support systems functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.

(2) An incumbent LEC that does not currently comply with this requirement shall do so as expeditiously as possible, but, in any event, no later than January 1, 1997; and

(g) *Operator Services and Directory Assistance*. An incumbent LEC shall provide access to operator service and directory assistance facilities where technically feasible.